

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RICHI BRIONES,

Plaintiff,

v.

GITTERE,

Defendant.

Case No. 3:20-cv-00334-MMD-CLB

ORDER

This action began with the filing of a motion for appointment of counsel and an incomplete application to proceed *in forma pauperis* by Plaintiff Richi Briones, a prisoner incarcerated at the Ely State Prison. (ECF Nos. 1, 1-1.)

On June 8, 2020, this Court issued an order granting Plaintiff until August 7, 2020, to file a complaint and a fully complete application to proceed *in forma pauperis*, including a financial certificate and an inmate account statement, or pay the full \$400 filing fee. (ECF No. 3 at 2-3.) The August 7, 2020, deadline has now expired, and Plaintiff has not filed a complaint, another application to proceed *in forma pauperis*, paid the full \$400 filing fee, or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856

1 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule
2 requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal*
3 *Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with
4 court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming
5 dismissal for lack of prosecution and failure to comply with local rules).

6 In determining whether to dismiss an action for lack of prosecution, failure to obey
7 a court order, or failure to comply with local rules, the Court must consider several factors:
8 (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to
9 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
10 disposition of cases on their merits; and (5) the availability of less drastic alternatives. See
11 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
12 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

13 Here, the Court finds that the first two factors, the public's interest in expeditiously
14 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
15 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
16 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
17 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*
18 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
19 disposition of cases on their merits—is greatly outweighed by the factors in favor of
20 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey the
21 court's order will result in dismissal satisfies the "consideration of alternatives"
22 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d
23 at 1424.

24 The Court's order requiring Plaintiff to file a complaint and another application to
25 proceed *in forma pauperis* or pay the full filing fee on or before August 7, 2020, expressly
26 stated: "IT IS FURTHER ORDERED that, if Plaintiff does not file a complaint and a fully
27 complete application to proceed *in forma pauperis* with all three documents or pay the full
28 \$400 filing fee for a civil action on or before August 7, 2020, the Court will dismiss this

1 action without prejudice for Plaintiff to refile the case with the Court, under a new case
2 number, when Plaintiff is able to file a complaint and has all three documents needed to
3 file a complete application to proceed *in forma pauperis* or pays the full \$400 filing fee.”
4 (ECF No. 3 at 3.) Thus, Plaintiff had adequate warning that dismissal would result from
5 his noncompliance with the Court’s order to file a complaint and another application to
6 proceed *in forma pauperis* or pay the full filing fee on or before August 7, 2020.

7 It is therefore ordered that this action is dismissed without prejudice based on
8 Plaintiff’s failure to file a complaint and another application to proceed *in forma pauperis*
9 or pay the full \$400 filing fee in compliance with this Court’s June 8, 2020, order (ECF No.
10 3).

11 It is further ordered Plaintiff’s incomplete application to proceed *in forma pauperis*
12 (ECF No. 1) is denied as moot.

13 It is further ordered that the Clerk of Court will close this case and enter judgment
14 accordingly. No additional documents will be filed in this closed case.

15 DATED THIS 14th day of August 2020.

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19 MIRANDA M. DU
20 CHIEF UNITED STATES DISTRICT JUDGE
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